

§ 14.320

§ 14.320 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with the settlement procedure applicable to the underlying proceeding. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 14.325 Extensions of time and further proceedings.

(a) The adjudicative officer on motion and for good cause shown may grant extensions of time other than for filing an application for fees and expenses after final disposition in the adversary adjudication.

(b) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions, or as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(c) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

24 CFR Subtitle A (4-1-02 Edition)

§ 14.330 Decision.

The adjudicative officer shall issue an initial decision on the application within 30 days after completion of proceedings on the application. The decision shall include written findings and conclusions on such of the following as are relevant to the decision:

(a) The applicant's status as a prevailing party;

(b) The applicant's qualification as a *party* under 5 U.S.C. 504(b)(1)(B);

(c) Whether the agency's position was substantially justified;

(d) Whether special circumstances make an award unjust;

(e) Whether the applicant during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy; and

(f) The amounts, if any, awarded for fees and other expenses, with reasons for any difference between the amount requested and the amount awarded.

If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 14.335 Departmental review.

(a) Either the applicant or agency counsel may seek review of the initial decision on the fee application, or the Secretary (or his or her delegate, if any) may decide to review the decision on his or her own initiative, in accordance with the Department's review or appeals procedures applicable to the underlying proceeding. If neither the applicant nor agency counsel seeks review and the Secretary (or his or her delegate, if any) does not take review on his or her own initiative, the initial decision on the application shall become a final decision of the Department in the same manner as a decision in the underlying proceeding becomes final. Whether to review a decision is a matter within the discretion of the Secretary (or his or her delegate, if any). If review is taken, the Department will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.